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The
NORTH CAROLINA
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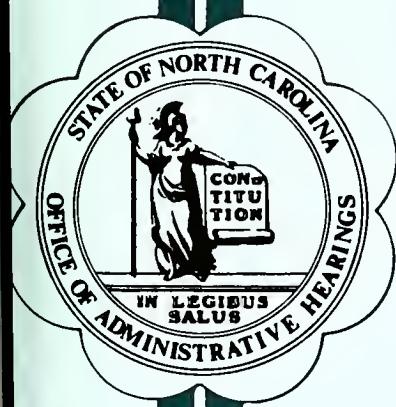
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ISSUE DATE: APRIL 14, 1989

Volume 4 • Issue 2 • Pages 152-192



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. 1:1 NCR 101-201, April 1, 1980 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1980.

North Carolina Register. Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions one hundred and five dollars (\$105.00) per year.

North Carolina Administrative Code. Published in looseleaf notebooks with supplement service by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions seven hundred and fifty dollars (\$750.00). Individual volumes available.

NORTH CAROLINA REGISTER

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*Office of Administrative Hearings
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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(January 1989 - May 1990)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
01 02 89	12 08 88	12/15/88	02/01/89	05/01/89
01 16 89	12 27 88	01 03 89	02 15 89	05/01/89
02 01 89	01 10 89	01 17 89	03 03 89	06/01/89
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* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of KATHRYN SUE ALDRIDGE, now, by virtue of the authority vested in me by law I do hereby appoint her Administrative Law Judge and confer upon her all of the rights, privileges and powers useful and necessary to the just and proper discharge of her duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 3rd day of April, 1989.

s/Robert A. Melott

Chief Administrative Law Judge
Director

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend rule(s) cited as 2 NCAC 48C .0002, .0004.

The proposed effective date of this action is August 1, 1989.

The public hearing will be conducted at 10:00 a.m. on June 21, 1989 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48C - SEEDS

.0002 NOXIOUS SEED LIST

The following seeds are classified as prohibited noxious or restricted noxious:

(1) prohibited noxious:

(2) Serrated Tussock--Nassella trichotoma;

Statutory Authority G.S. 106-277.9; 106-277.15.

.0004 PROHIBITIONS

The sale of any seed containing Johnson grass, Jimsonweed, crotalaria, witchweed, balloon vine, ~~or~~ itchgrass, or serrated tussock is prohibited.

Statutory Authority G.S. 106-277.15.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to amend rule(s) cited as 10 NCAC 4C .0303; 10 NCAC 7B .0101; 10 NCAC 10.4 .0443; and 10 NCAC 11 .0705.

The proposed effective date of this action is September 1, 1989.

The public hearing will be conducted at 1:30 p.m. on May 15, 1989 at Caswell Building, Board Room (First Floor/Room No. 179), 200 W. Jones Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3134. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral comments (no more than ten minutes for oral comments) on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.

CHAPTER 4 - HEALTH SERVICES: OFFICE OF THE DIRECTOR

SUBCHAPTER 4C - PAYMENT PROGRAMS

SECTION .0300 - ELIGIBILITY PROCEDURES

.0303 PAYMENT LIMITATIONS

(c) Payment program benefits shall be available only for services or appliances which are not covered by ~~a~~ another third party payor ~~and~~ or which cannot be paid for out of funds received in settlement of a civil claim. ~~for bodily injury.~~ However, payment program benefits shall be available for Children's Special Health Services sponsored clinic patients who cannot reasonably be examined or treated by a Medicaid provider or an authorized provider for another third party payor because of transportation problems, a need for emergency care, or similar exceptional situations. All exceptions must be approved by the Children's Special Health Services program's medical director. Providers shall take reasonable measures to collect other third party payments. For the purposes of this Subchapter, third party payor means any person or entity that is or may be indirectly liable for the cost of services or appliances furnished to a patient. Third party payors include, without limitation, the following:

- (1) School services, including physical or occupational therapy, speech and language pathology and audiology services, and nursing services for special needs children;
- (2) Medicaid;
- (3) Medicare, Part A and Part B;
- (4) Insurance;

- (5) Social Services;
- (6) Vocational Rehabilitation;
- (7) Worker's compensation;
- (8) CHAMPUS; and
- (9) Head start programs.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

CHAPTER 7 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 7B - HIGHWAY SAFETY

SECTION .0100 - GENERAL POLICIES

.0101 PURPOSE

The purpose of the ~~highway safety~~ injury control branch is to:

- (1) provide a system for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability. Medical recommendations are submitted to the driver licensing agency to deny driving privileges to high-risk drivers or to issue restricted driving privileges to drivers where such restrictions will compensate for physical and ~~disability~~ mental conditions.
- (2) provide effective and uniform chemical test procedures for determining alcohol concentrations in persons charged with implied consent offenses. Rules and regulations governing methods of performing chemical analyses of the breath and blood are promulgated and permits are issued to individuals found competent to perform such analyses.
- (3) provide programs that deal with the study, prevention, and control of a variety of injuries of public health significance in North Carolina. Program staff work with federal, state, and local groups and officials to achieve reductions in injury morbidity and mortality.

Statutory Authority G.S. 20-139.1(b); 143B-10.

CHAPTER 10 - HEALTH SERVICES: ENVIRONMENTAL HEALTH

SUBCHAPTER 10A - SANITATION

SECTION .0400 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.0443 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- (12) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting the rapid and progressive growth of infectious or toxicogenic microorganisms or the slower growth of Clostridium botulinum. Included is any food of animal origin, either raw or heat treated, and any food of plant origin which has been treated or which is raw seed sprouts. The term does not include clean, whole, uncracked, ~~odor free~~, shell eggs or foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

Statutory Authority G.S. 130A-248.

CHAPTER 11 - MEDICAL EXAMINER

SECTION .0700 - FEES PAID FOR SERVICES

.0705 CREMATION FEE

The county medical examiner is authorized a fee of thirty-five dollars (\$35.00) to be paid by the applicant for inquiring into the cause and manner of death and inspecting the body of a decedent who is to be cremated or buried at sea. The fee is not authorized if the death comes within the jurisdiction of the county medical examiner as specified in G.S. 130A-383 or G.S. 130A-384. The fee is authorized in the investigation of deaths of infants with a gestational age of 20 weeks or greater if they were born alive, and lived for more than 24 hours. Investigation of ~~still births~~ stillbirths is not required unless there is indication that death occurred by criminal act or default, or under suspicious, unusual or unnatural circumstances. Deaths in association with medically unattended deliveries or delivery by a midwife approved pursuant to G.S. 90-178.5 are considered to fall within the medical examiner's jurisdiction as specified in G.S. 130A-383 and G.S. 130A-384. No inquiry is required in deaths of patients resulting only from natural disease and occurring in a licensed hospital or nursing home, or while receiving care from a licensed hospice. No inquiry is required prior to cremation or burial at sea for bodies donated or bequeathed to the Commission for Anatomy or medical schools for research or educational purposes.

Statutory Authority G.S. 130A-388; 130A-393.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to adopt rule(s) cited as 10 NCAC 8A .1201 - .1211.

The proposed effective date of this action is August 1, 1989.

The public hearing will be conducted at 1:30 p.m. on May 15, 1989 at Caswell Building, Board Room (First Floor Room No. 179), 200 W. Jones Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3134. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral comments (no more than ten minutes for oral comments) on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.

CHAPTER 8 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 8A - CHRONIC DISEASE

SECTION .1200 - HEALTH CARE SERVICES IN THE HOME DEMONSTRATION PROGRAM

.1201 GENERAL

(a) The mission of the Health Care Services in the Home Demonstration Program is to demonstrate and document a program to improve and better enable existing systems of home care to help individuals at risk avoid lengthy stays in hospitals and other institutions.

(b) The Demonstration Program is administered by the Health Care Branch, Division of Health Services, North Carolina Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602.

Statutory Authority G.S. 130A-223.

.1202 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "In Home Health Care Services" are skilled nursing, home health aide, therapy, medical social services, ancillary medical supplies, durable medical equipment, case management, home mobility aids, telephone alert, physician services, nurse practitioner services, psychologists services, nutritionists services, respiratory therapy services, and self-care education services for persons with diabetes or hypertension provided at the patient's place of residence as a part of an agency approved plan of care.
- (2) "Home Health Agency" is a public, private non-profit or private proprietary home health agency certified by Medicaid and Medicare.
- (3) "Demonstration Program" means the Health Care Services in the Home Demonstration Program.
- (4) "Skilled Nursing Services" are skilled nursing services as defined in Home Health Medicaid Manual (HHMM) Section 5201.1. Copies of the HHMM may be inspected at or obtained from the Demonstration Program Office, P.O. Box 2091, Raleigh, North Carolina 27602.
- (5) "Home Health Aides Services" are home health aide services as defined in HHMM Section 5202.2.
- (6) "Therapy Services" are therapy services defined in HHMM Section 5202.3.
- (7) "Medical Social Services" are medical social services as defined in 42 C.F.R. 405.1226. Copies of the rule may be inspected at or obtained from the Demonstration Program Office, P.O. Box 2091, Raleigh, North Carolina 27602.
- (8) "Durable Medical Equipment (DME)" is durable medical equipment as defined in Health Care Financing Administration (HCFA) publication 15-I. Copies of HCFA publication 15-I may be inspected at or obtained from the Home Health Services Program Office, P.O. Box 2091, Raleigh, North Carolina 27602.
- (9) "Medical Supplies" are medical supplies as defined in HCFA publication 15-I.
- (10) "Assessment Evaluations" are evaluations that identify individuals who are likely to be at risk of institutionalization or prolonged or frequent recurring hospitalization and are likely to need but are unable to afford skilled medical or related health services in order to avoid institu-

tionalization. Assessment evaluations are divided into two parts:

- (a) The pre-assessment screening to establish presumptive eligibility for the assessment; and
- (b) The comprehensive assessment to:
 - (i) determine the degree of risk for institutionalization or hospitalization if the individual does not receive or continue to receive skilled medical, health and related services in the home; and
 - (ii) conduct comprehensive in-home health, social, and environmental assessments to determine those who need skilled medical or related health services, those who need both, those who need other in-home services, those who have no need, and those whose needs cannot be met in the home.

(11) "Case Management" is the use of multiple and varied services including social, rehabilitative, skilled medical and related health services that are located, coordinated and monitored to meet the needs of eligible clients. Case management may only be provided in conjunction with at least one additional in home health care service.

(12) "Home Mobility Aids" are the provision of minor renovations or minor physical adaptations to the client's home when these adaptations are considered necessary to enable clients to remain in the home.

(13) "Telephone Alert" is a system that uses telephone lines to alert a central monitoring facility that there is a medical emergency in the household.

(14) "Physician Services" are services provided by a person licensed to practice medicine in North Carolina.

(15) "Physicians Assistant Services" are services provided by an individual authorized to perform medical acts under the supervision of a physician pursuant to G.S. 90-18.1.

(16) "Nurse Practitioners Services" are services provided by a Registered Nurse who has met the educational requirements approved by the Board of Medical Examiners to perform determined medical acts.

(17) "Psychologists Services" are services provided by a person licensed to perform psychological analysis, therapy or research.

(18) "Nutritionists Services" are services provided by a registered dietician.

(19) "Respiratory Therapy Services" are services for the treatment of disease by using breathing devices to restore maximum bodily function and preventing disability following disease. These services must be provided by a registered, certified respiratory therapist.

(20) "Self-care Education Services" are those services that provide self-care skill development to enable patients diagnosed with chronic conditions to integrate such skills into their daily lives. Self care skills include, but are not limited to compliance with medication regimen; ability to administer the medication correctly; ability to follow meal plans and portion exchanges; ability to perform tests, including the ability to monitor blood glucose and blood pressure; and the ability to use exercise as a therapeutic modality.

(21) "Demonstration Program Reimbursement Rate" is the:

- (a) Interim Medicaid rate for nursing services, home health aide services and therapy services; physician services, physician assistant services, family nurse practitioner services, nutritionist services, psychologist services, case management services;
- (b) Interim Medicare rate for medical social services, durable medical equipment and ancillary medical supplies which includes home mobility aids and telephone alert systems; and
- (c) A schedule of payments that shall be developed by the Division of Health Services for assessment evaluation services, self-care education services, nutrition services, and other covered services for which neither Medicaid nor Medicare has an established reimbursement rate.

(22) "Third Party Payor" is any person or entity that is or may be indirectly liable for the cost of service furnished to a patient. Third party payors include, without limitation, Medicaid, Medicare, and private insurance.

Statutory Authority G.S. 130A-223.

.1203 ELIGIBLE PROVIDERS

The Demonstration Program may contract with local health departments, public and private certified home health agencies, and any other public or private organization, institution, and agency in order to carry out the Demonstration Program mission as set out in

Rule .1201 of this Section. Only home health agencies participating in the home health services program under 10 NCAC 8A .0200 shall be eligible to contract for Demonstration Program reimbursement funds.

Statutory Authority G.S. 130A-223.

.1204 FINANCIAL ELIGIBILITY

(a) Demonstration Program reimbursement funds shall be used to pay for in home health care services and assessment evaluations provided to financially eligible patients. Financial eligibility shall be determined by the home health agency by a signed declaration of gross income and family size by the patient or a person responsible for the patient. A patient whose gross family income is 125 percent or less of Federal Poverty Guidelines shall be financially eligible for full coverage under the program. A patient whose gross family income is between 125 percent and 200 percent of Federal Poverty Guidelines shall be eligible for partial coverage as defined in Rule .1206 of this Section under the program. A patient whose gross family income is 200 percent or more of Federal Poverty Guidelines is not eligible for coverage under the program. Copies of the Federal Poverty Guidelines may be inspected at or obtained from the Demonstration Program Office, P.O. Box 2091, Raleigh, North Carolina 27602.

(b) Once a patient is determined to be financially eligible, that eligibility shall continue for the duration of the plan of care for the patient, up to a maximum of one year.

(c) The home health agency shall document each financial eligibility determination on a form provided by the Demonstration Program.

(d) The home health agency is authorized to require substantiating documentation when making financial eligibility determinations.

Statutory Authority G.S. 130A-223.

.1205 MEDICAL ELIGIBILITY

A person determined to be at risk for institutionalization or prolonged or frequently recurring hospitalization and who is in need of in home health care services is eligible for services under this program.

Statutory Authority G.S. 130A-223.

.1206 BILLING THE DEMONSTRATION PROGRAM

(a) If a patient's gross family income is 125 percent or less of Federal Poverty Guidelines,

the home health agency may bill the Demonstration Program Reimbursement Rate (Rule .1202). The agency may not bill a patient in this income category.

(b) If a patient's gross family income is between 125 percent and 200 percent of Federal Poverty Guidelines, the home health agency may bill the program as follows:

- (1) 85 percent of the Demonstration Program Reimbursement Rate if the patient's gross family income is between or includes 126 percent and 140 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 15 percent of the Demonstration Program Reimbursement Rate;
- (2) 70 percent of the Demonstration Program Reimbursement Rate if the patient's gross family income is between or includes 141 percent and 155 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 30 percent of the Demonstration Program Reimbursement Rate;
- (3) 55 percent of the Demonstration Program Reimbursement Rate if the patient's gross family income is between or includes 156 percent and 170 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 45 percent of the Demonstration Program Reimbursement Rate;
- (4) 40 percent of the Demonstration Program Reimbursement Rate if the patient's gross family income is between or includes 172 percent and 185 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 60 percent of the Demonstration Program Reimbursement Rate; or
- (5) 25 percent of the Demonstration Program Reimbursement Rate if the patient's gross family income is between or includes 186 percent and 199 percent of Federal Poverty Guidelines. The patient is responsible for the remaining 75 percent of the Demonstration Program Reimbursement Rate.

Statutory Authority G.S. 130A-223.

.1207 RATES OF REIMBURSEMENT

(a) Home health agencies that contract for reimbursement funds shall be reimbursed for in-home health services provided to eligible patients in an amount and percentage based on the Demonstration Program Reimbursement Rate in effect at the time service is ren-

dered, as specified in Rule .1202 of this Section.

(b) Claims for reimbursement from Demonstration Program must be documented and reported on a quarterly basis on a form provided by the program. No claims for reimbursement will be accepted by the Demonstration Program more than 180 days after the date of delivery of services. If after charging the program, the agency receives payment from the patient or other third party that would result in the agency receiving more than the Demonstration Program Reimbursement Rate, the agency shall reimburse the program the difference between the total amount reimbursed from all sources and the Demonstration Program Reimbursement Rate.

Statutory Authority G.S. 130A-223.

.1208 REIMBURSEMENT FUNDS: THIRD PARTY PAYORS

Demonstration Program reimbursement funds shall be used to pay for services not reimbursed by a third party payor. A contracting home health agency must take reasonable measures to determine and subsequently collect the full legal liability of third party payors to pay for services reimbursed by the program before requesting payment from the Demonstration Program.

Statutory Authority G.S. 130A-223.

.1209 MONITORING

Each home health agency receiving reimbursement funds shall submit the following information in a form as prescribed by and in the time frames established in the contract:

- (1) Demonstration Program quarterly report;
- (2) Demonstration Program annual report;
- (3) Quarterly expenditure report;
- (4) Report the fairly evaluated cost of unreimbursed care provided to patients eligible for the Demonstration Program; and
- (5) Other information necessary for the effective administration of the Demonstration Program.

Statutory Authority G.S. 130A-223.

.1210 AUDITS

Agency financial and statistical records, patient records, and any other pertinent information may be audited by the state as part of the overall monitoring and evaluation effort.

Statutory Authority G.S. 130A-223.

.1211 SPECIAL PROVISIONS

(a) Each home health agency contracting for reimbursement funds must provide, by itself or from other non-federal sources:

- (1) An amount of in-home health care services equal to not less than twenty-five dollars (\$25.00) for each seventy-five dollars (\$75.00) of first year Demonstration Program reimbursement funds expended under the contract;
- (2) An amount of in-home health care services equal to not less than thirty-five dollars (\$35.00) for each sixty-five dollars (\$65.00) of second year Demonstration Program reimbursement funds expended under the contract; and
- (3) An amount of in-home health care services equal to not less than forty-five dollars (\$45.00) for each fifty-five dollars (\$55.00) of third year Demonstration Program reimbursement funds expended under the contract.

(b) Each home health agency contracting for reimbursement funds shall assure that individuals 65 years of age and over shall comprise not less than 25 percent of the individuals receiving in-home health care services under the contract.

(c) First year Demonstration Program funds in an amount not less than 10.5 percent of the total federal financial assistance shall be made available to support Demonstration Program activities and services for innovative, integrated, and coordinated ways to serve migrant farm workers and AIDS patients within their individual living environments.

Statutory Authority G.S. 130A-223.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26II .0102 and .0204.

The proposed effective date of this action is August 1, 1989.

The public hearing will be conducted at 1:30 p.m. on May 14, 1989 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning these amendments must be submitted by May 14, 1989 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on these rule amendments is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26II - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES

.0102 RATE SETTING METHODS

(f) A single all-inclusive prospective per diem rate including both direct and indirect cost components can be negotiated for facilities that specialize in providing intensive services for head-injured or ventilator-dependent patients. The rate may exceed the maximum rate applicable to other SNF and ICF services. To qualify, a facility must designate at least 50 percent or 25 of its licensed beds for either head-injury or ventilator services. A complete description of the specialized program must be provided. A provider's initial rate is negotiated based on budget projections of revenues, allowable cost, patient days, staffing and wages. Subsequent rates are determined by applying the average annual SNF and ICF adjustment factors to the rate or cost in the previous year. Cost reports for these services must be filed in accordance with the rules in Rule .0104, but there will be no cash settlements for any differences between costs and payments.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447 Subpart C.

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0204 ADMINISTRATIVE APPEALS

(4) Rate appeals can be considered for hospitals serving a disproportionate share of low income patients with special needs. A disproportionate share is measured by a combination of total Medicaid revenues, bad debts, and charity care as a percentage of gross patient revenues. This financial information must be submitted in a prescribed form for the

most recently completed fiscal year for which independently audited financial statements are available. If a hospital's share of low income patients exceeds twenty percent of gross patient revenues, it is eligible to receive an increase, not to exceed five percent in its Medicaid per diem rate, subject to the limit defined in (e) of this Rule. The disproportionate share status of a hospital must be re-validated each year based on the most recent financial information available.

(e) A hospital's adjusted rate for any of the reasons cited in this Section cannot exceed a rate limit to be computed by applying the methods described in Rule .0202(b) and (c) to the hospital's allowable Medicaid cost in the most recent cost report available. Only one appeal will be considered during the rate period. Adjustments can be applied retroactively to the most recent July 1 rate effective date, but cannot be applied to previous fiscal years.

(d) A hospital's adjusted rate for one or more of the factors cited in the Paragraphs (a) - (c) of this Rule cannot exceed a rate limit computed by applying the methods described in Rule .0202 (b) and (c) of this Subchapter to the hospital's allowable Medicaid cost in the most recent annual cost report available.

(e) Hospitals that serve a disproportionate share of low-income patients are eligible to receive rate adjustments. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or
- (2) The hospital's low-income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) the ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) the ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments, divided by the hospital's total inpatient charges; or
- (3) the sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; and

(4) the hospital has at least 2 obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric procedures. This requirement does not apply to a hospital which did not offer non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age.

(f) The rate adjustment for a disproportionate share hospital is equal to the higher of the percentage adjustment received in the fiscal year 1987-88 or 2.5 percent plus one-fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

(g) Rate adjustments are considered based on the most recent annual cost report, audited financial statements when necessary and other required information as submitted by a hospital provider. An adjustment cannot be made if the necessary information is not submitted or if the information is incomplete or incorrect. A rate adjustment can be applied retroactively to the most recent July 1 effective date, but cannot be applied to previous fiscal years.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule(s) cited as 15 NCAC 2D .0101, .0104, .0401, .0404, .0407, .0501, .0511, .0516, .0519, .0524 - .0525, .0530 - .0532, .0901, .0903, .0912 - .0913, .0917 - .0938, .0941, .0943; and 15 NCAC 2H .0601, .0603, .0606.

The proposed effective date of this action is September 1, 1989.

The public hearing will be conducted at 2:00 p.m. on May 19, 1989 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Persons desiring to comment on the proposals are requested to give written notice thereof on or before the hearing date. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. To be included, the statement must be received by the Department within 30 days after the hearing date. Additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 27687
Raleigh, North Carolina 27611-7687
(919) 733-3340

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND REFERENCES

.0101 DEFINITIONS

The definition of any word or phrase used in Regulations of this Subchapter is the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

(1) ~~(10)~~ "Act" means "The North Carolina Water and Air Resources Act."

(2) ~~(26)~~ "Air pollutant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any other air contaminant. Water vapor is not considered an air pollutant.

(3) ~~(49)~~ "Ambient air" means that portion of the atmosphere outside of buildings and other enclosed structures, stacks or ducts, and which surrounds human, animal or plant life, or property.

(4) "Approved" means approved by the Director of the Division of Environmental Management.

(5) “Capture system” means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

(6) ~~(24)~~ “CFR” means “Code of Federal Regulations.”

(7) ~~(14)~~ “Combustible material” means any substance which, when ignited, will burn in air.

(8) ~~(20)~~ “Construction” means any physical change, including fabrication, erection, installation, change in method of operation, or modification, of a facility, source, or air pollution control equipment.

(9) “Control device” means equipment (fume incinerator, adsorber, absorber, scrubber, filtermedia, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) prior to discharge to the ambient air.

(10) “Day” means a 24-hour period beginning at midnight.

(11) ~~(5)~~ “Director” means the Director of the Division of Environmental Management unless otherwise specified.

(12) ~~(14)~~ “Dustfall” means particulate matter which settles out of the air and is expressed in units of grams per square meter per 30-day period.

(13) “Emission” means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.

(14) ~~(30)~~ “Facility” means all of the pollutant emitting activities that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control.

(15) ~~(23)~~ “FR” means Federal Register.

(16) ~~(22)~~ “Fugitive emission” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(17) ~~(14)~~ “Fuel burning equipment” means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnace, furnishing process heat by transferring energy by fluids or through process vessel walls.

(18) ~~(24)~~ “Garbage” means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

(19) ~~(3)~~ “Incinerator” means a device designed to burn solid, liquid, or gaseous waste material.

(20) ~~(4)~~ “Opacity” means that property of a substance tending to obscure vision and is measured in terms of percent obscuration.

(21) ~~(12)~~ “Open burning” means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.

(22) ~~(14)~~ “Owner or operator” means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.

(23) ~~(13)~~ “Particulate matter” means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.

(24) ~~(28)~~ “Particulate matter emissions” means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.

(25) ~~(22)~~ “Permitted” means any source subject to a permit under this Subchapter or Section 15 NCAC 211 .0600.

(26) “Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.

(27) ~~(25)~~ “PM10” means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by methods specified in this Subchapter.

(28) ~~(27)~~ “PM10 emissions” means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by methods specified in this Subchapter.

(29) ~~(5)~~ “Refuse” means any garbage, rubbish, or trade waste.

(30) ~~(6)~~ “Rubbish” means solid or liquid wastes from residences, commercial establishments, or institutions.

(31) ~~(14)~~ “Rural area” means an area which is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.

(32) ~~(15)~~ “Salvage operation” means any business, trade, or industry engaged in whole

or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.

(33) (7) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.

(34) (16) "Smoke density measuring device" means:

- (a) Ringelmann Chart which is the chart published by the U.S. Bureau of Mines and described in their Information Circular 8333 and on which are illustrated graduated shades of grey to black for use in estimating the light obscuring capacity of smoke;
- (b) the pocket size Ringelmann Chart and other adaptations commonly used by trained smoke inspectors;
- (c) other equivalent standards approved by the commission.

(35) (33) "Source" means any stationary article, machine, process equipment, or other contrivance or any tank-truck, trailer or railroad tank car from which air pollutants emanate or are emitted, either directly or indirectly.

(36) (17) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.

(37) (18) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne, as measured by methods specified in this Subchapter.

(38) (20) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.

(39) (24) "ug" means micrograms.

Statutory Authority G.S. 143-213; 143-215.3(a)(1).

.0104 ADOPTION BY REFERENCE UPDATES

(a) The Code of Federal Regulations adopted by reference in this Subchapter shall automati-

ically include any later amendments thereto as allowed by G.S. 150B-14(c) with the following exceptions:

- (1) However, New types categories of sources in 40 CFR Part 60 and 61 for which new source performance standards or national emission standards for hazardous air pollutants have been promulgated by EPA; are not automatically included in these Regulations. These new types of sources shall be adopted as part of Regulation .0524 or .0525 of this Section using rule making procedures.
- (2) The Code of Federal Regulations when referenced in Rules .0530, .0531, and .0532 of this Subchapter.
- (b) New categories of sources in 40 CFR Part 60 and 61 for which new source performance standards or national emission standards for hazardous air pollutants have been promulgated by EPA, if and when adopted, shall be adopted as part of Rule .0524 or .0525 of this Subchapter using rule making procedures.
- (c) The version of the referenced Code of Federal Regulations in Rules .0530, .0531, and .0532 of this Subchapter is that as of January 1, 1989.

Statutory Authority G.S. 150B-14.

SECTION .0400 - AMBIENT AIR QUALITY STANDARDS

.0401 PURPOSE

(a) The purpose of the ambient air quality standards set out in this Section is to establish certain maximum limits on parameters of air quality considered desirable for the preservation and enhancement of the quality of the state's air resources. Furthermore, the objective of the commission, consistent with the North Carolina Air Pollution Control Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the state where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property.

(b) Ground level concentrations of pollutants will be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards are applicable at each such sampling location in the state.

(c) No source of air pollution shall cause any ambient air quality standard in this Section to

be exceeded or contribute to a violation of any ambient air quality standard in this Section except as allowed by Rules .0531 or .0532 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

.0404 CARBON MONOXIDE

(a) The ambient air quality standards for carbon monoxide are:

- (1) 9 parts per million (10 milligrams per cubic meter) (~~40 p.p.m.~~) maximum eight-hour average concentration not to be exceeded more than once per year.
- (2) 35 parts per million (40 milligrams per cubic meter) (~~45 p.p.m.~~) maximum one-hour average concentration not to be exceeded more than once per year.

(b) Sampling and analysis shall be in accordance with procedures in Appendix C 40 CFR Part 50 or equivalent methods established under 40 CFR Part 53.

(c) An eight-hour average shall be considered valid if at least 75 percent of the hourly averages for the eight-hour period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be computed on the basis of the hours available using six or seven as the divisor.

(d) When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

.0407 NITROGEN DIOXIDE

(a) The ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter) (~~0.05 p.p.m.~~) annual arithmetic mean.

(b) Sampling and analysis shall be in accordance with procedures in Appendix E 40 CFR Part 50 or equivalent methods established under 40 CFR Part 53.

(c) The standards are attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 parts per million, rounded to three decimal places (fractional parts equal to or greater than 0.0005 parts per million are rounded up). To demonstrate attainment, an annual mean must be based on hourly data that are at least 75 percent complete or on data derived from manual

methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

SECTION .0500 - EMISSION CONTROL STANDARDS

.0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in Regulations .0524, .0525, and .0604 of this Subchapter:

(3) Sampling procedures for determining compliance with particulate emission control standards shall be in accordance with Method 5 of Appendix A of 40 CFR Part 60. Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 provided that the stack gas temperature does not exceed 320° F. The minimum time per test point for particulate testing shall be two minutes and the minimum time per test run shall be one hour. The sample gas drawn during each test run shall be at least 30 cubic feet. A number of sources are known to emit organic material (oil, pitch, plasticizers, etc.) which exist as finely divided liquid droplets at ambient conditions. These materials cannot be satisfactorily collected by means of the above Method 5. In these cases the commission will reserve the option to require the use of Method 5 as proposed on August 17, 1971, in the Federal Register, Volume 36, Number 159.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0511 PARTICULATES FROM LIGHTWEIGHT AGGREGATE PROCESSES

(a) A person shall not cause, allow, or permit any material to be produced, handled, transported or stockpiled without taking measures to reduce to a minimum any particulate matter from becoming airborne.

(b) The owner or operator of the plant shall maintain dust control of the plant premises and access roads which he controls by paving, oil treatment, or other suitable measures.

(c) All stone crushing operations shall employ a water spray over the crusher.

(d) Particulate matter from any stack serving a kiln or dryer shall be reduced by at least 95 percent by weight before being discharged to the atmosphere. The 95 percent reduction shall be by air pollution control devices. ~~The emissions of sulfur dioxide from any kiln or dryer shall not exceed 2.3 pounds per million BTU heat input.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0516 SULFUR DIOXIDE EMISSIONS FROM COMBUSTION SOURCES

(a) Emission of sulfur dioxide from ~~the any source of combustion of a fuel or fuels~~ that is discharged from any vent, stack, or chimney shall not exceed 2.3 pounds of sulfur dioxide per million BTU input. ~~Sulfur dioxide formed by the combustion of sulfur in fuels, wastes, ores, and other substances shall be included when determining compliance with this standard. Sulfur dioxide formed or reduced as a result of treating flue gases with sulfur trioxide or other materials shall also be accounted for when determining compliance with this standard.~~

(b) A source subject to an emission standard for sulfur dioxide in Regulation .0524 or .0525 of this Section shall meet that standard.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0519 CONTROL OF NITROGEN DIOXIDE AND NITROGEN OXIDES EMISSIONS

(a) The emissions of nitrogen dioxide shall not exceed:

- (1) 0.6 pounds per million BTU of heat input ~~per hour~~ from any oil or gas-fired boiler with a capacity of 250 million BTU per hour or more;
- (2) 1.3 pounds per million BTU of heat input ~~per hour~~ from any coal-fired boiler with a capacity of 250 million BTU per hour or more;
- (3) 5.8 pounds per ton of acid produced from any nitric acid manufacturing plants;
- (4) 5.8 pounds per ton of acid produced from any sulfuric acid manufacturing plant.

(b) The emissions of nitrogen oxides shall not exceed:

- (1) 0.8 pounds per million BTU of heat input from any oil or gas-fired boiler

~~with a capacity of 250 million BTU per hour or more;~~

(2) ~~1.8 pounds per million BTU of heat input from any coal-fired boiler with a capacity of 250 million BTU per hour or more.~~

(c) The emission limit for a boiler that burns both coal and oil or gas in combination shall be calculated by the equation $E = [(Ec)(Qc) + (Eo)(Qo)] / Qt$.

(1) E = the emission limit for combination in lb/million BTU.

(2) Ec = emission limit for coal only as determined by Paragraph (a) or (b) of this Rule in lb/million BTU.

(3) Eo = emission limit for oil or gas as determined by Paragraph (a) or (b) of this Rule in lb/million BTU.

(4) Qc = the actual coal heat input to the combination in BTU/hr.

(5) Qo = the actual oil and gas heat input to the combination in BTU/hr.

(6) $Qt = Qc + Qo$ and is the actual total heat input to the combination in BTU/hr.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0524 NEW SOURCE PERFORMANCE STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

(58) rubber tire manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.540 to 60.549, Subpart BBB);

(59) ~~industrial surface coating: surface coating of plastic parts for business machines (40 CFR 60.1 to 60.39 and 40 CFR 60.720 to 60.729, Subpart TTT);~~

(60) ~~magnetic tape coating facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.710 to 60.719, Subpart SSS);~~

(61) ~~volatile organic compound emissions from petroleum refinery wastewater systems (40 CFR 60.1 to 60.39 and 40 CFR 60.690 to 60.699, Subpart QQQ).~~

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Regulation shall be submitted to the Environmental Management Commission rather than to the Environmental Protection Agency.

(c) In the application of this Regulation, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) Paragraphs ~~(b)~~ and ~~(c)~~ (a) and (b) of Regulation .0601 of Subchapter 2II of this Chapter are not applicable to any source to which this Regulation applies. The source shall apply for and receive a permit as required in Paragraph ~~(a)~~ (c) of Regulation .0601 of Subchapter 2II of this Chapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

(1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to 61.156, Subpart M);

(d) Paragraphs ~~(b)~~ and ~~(c)~~ (a) and (b) of Regulation 15 NCAC 2II .0601 are not applicable to any source to which this Regulation applies. The source shall apply for and receive a permit as required in Paragraph ~~(a)~~ (c) of Regulation 15 NCAC 2II .0601.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0530 PREVENTION OF SIGNIFICANT DETERIORATION

(h) Paragraphs (a) and (b) of Regulation 15 NCAC 2II .0601 are not applicable to any source to which this Regulation applies. Sources to which this Regulation applies shall apply for and receive a permit as required in Paragraph (c) of Regulation 15 NCAC 2II .0601.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (3); 143-215.107 (a) (5); 143-215.107 (a) (7); 143-215.108 (b); 150B-14 (c).

.0531 SOURCES IN NONATTAINMENT AREAS

(a) This Regulation applies to certain new major stationary sources and major modifications which are located in an area which is designated by the U.S. Environmental Protection Agency (EPA) to be a nonattainment area. ~~as of May 4, 1982.~~

(d) Paragraphs (a) and (b) of Regulation 15 NCAC 2II .0601 are not applicable to any source to which this Regulation applies. The source shall apply for and receive a permit as required in Paragraph ~~(a)~~ (c) of Regulation 15 NCAC 2II .0601.

(e) To issue a permit to a source to which this Regulation applies, the director shall determine that the source will meet the following requirements:

(3) ~~The source will satisfy one of the following conditions:~~

~~(A) The source will not cause the total nonattainment pollutant emissions in the year that it will begin operation or subsequent years to exceed the greater of the emissions level depicted in the appropriate graph of Actual Emissions or the emission level depicted in the graph of Reasonable Further Progress. Total nonattainment pollutant emissions, besides including the emissions from the new source, will also include emissions from existing sources and other sources which are permitted but are not yet in operation. The appropriate graphs of Actual Emissions and Reasonable Further Progress are contained in Section XI of the North Carolina State Implementation Plan for Air Quality, or~~

~~(B) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new source will be less than the emissions reductions. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable regulations in effect prior to the application. The difference between the~~

emissions from the new source and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G). ~~The requirements of this Part may be partially waived if the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and only if:~~

- (i) the permit applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with this Part;
- (ii) the applicant has secured all available emission offsets; and
- (iii) the applicant will continue to seek the necessary emission offsets and apply them when they become available.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

.0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(d) Paragraphs (a) and (b) of Regulation 15 NCAC 2H .0601 are not applicable to any source to which this Regulation applies. The source shall apply for and receive a permit as required in Paragraph (c) of Regulation 15 NCAC 2H .0601.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

.0901 DEFINITIONS

For the purpose of this Section, the following definitions apply:

- (1) “Approved” means approved by the Director of the Division of Environmental Management.
- (2) “Capture system” means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (1) “Coating” means a functional, protective, or decorative film applied in a thin layer to a surface.
- (2) (3) “Coating applicator” means an apparatus used to apply a surface coating.
- (3) (4) “Coating line” means one or more apparatus or operations in a single line

wherein a surface coating is applied, dried, and/or cured and which include a coating applicator and flashoff area and may include an oven or associated control devices. wherein a surface coating is applied, dried, and/or cured.

- (5) “Construction” means commencement of on site fabrication, erection, or installation of an emission source air pollution control equipment, or a facility.
- (6) “Control device” means equipment (in incinerator, adsorber, or the like) used to destroy or remove air pollutant(s) prior to discharge to the ambient air.
- (4) (7) “Continuous vapor control system” means a vapor control system which treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.
- (5) “Delivered to the applicator” means the condition of coating after dilution by the user just before application to the substrate.
- (8) “Day” means a 24 hour period beginning at midnight.
- (9) “Emission” means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (10) “Facility” means any building, structure, installation, activity, or combination thereof which contains one or more stationary sources of air contaminants.
- (6) (11) “Flashoff area” means the space between the application area and the oven.
- (7) (12) “Hydrocarbon” means any organic compound of carbon and hydrogen only.
- (8) (13) “Incinerator” means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.
- (9) (14) “Intermittent vapor control system” means a vapor control system which employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device treats the accumulated vapors only during automatically controlled cycles.
- (10) (15) “Loading rack” means an aggregation or combination of loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

(11) (46) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(12) (47) "Oven" means a chamber within which heat is used to bake, cure, polymerize, and or dry a surface coating.

(18) (23) "Owner or operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

(19) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or attorney.

(13) (33) "Potential emissions" means the quantity of a pollutant which would be emitted at the maximum capacity of a stationary source to emit the pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is described or contained as a condition in the permit. Secondary emissions do not count in determining potential emissions of a stationary source. Fugitive emissions count, to the extent quantifiable, in determining the potential emissions only in these cases:

- (a) petroleum refineries;
- (b) chemical process plants; and
- (c) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(14) (20) "Prime coat" means the first film of coating applied ~~in a two coat operation~~ to a surface to protect it or to prepare it to receive subsequent coatings.

(15) (21) "Reasonably available control technology" (also denoted as RACT) means the lowest emission limit which a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. It may require technology which has been applied to similar, but not necessarily identical, source categories.

(16) (22) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Part 17, 1973, D-323-72 (reapproved 1977).

(17) (23) "Shutdown" means the cessation of operation of a facility ~~source or a part~~ thereof or emission control equipment.

(18) (24) "Solvent" means organic materials which are liquid at standard conditions ~~and which are liquid at standard conditions~~ and which are used as dissolvers, viscosity reducers, or cleaning agents.

(19) (25) "Standard conditions" means a temperature of 68°F and pressure of 29.92 inches of mercury.

(20) (26) "Startup" means the setting in operation of a source or emission control equipment.

(21) "Substrate" means the surface to which a coating is applied.

(27) "Source" means any stationary article, machine, process equipment, or other contrivance or any tank truck, trailer or railroad tank car from which air pollutants emanate or are emitted, either directly or indirectly.

(22) (28) "Topcoat" means the final ~~film~~ films of coating applied in a multiple coat operation.

(23) (29) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.

(24) (30) "Vapor collection system" means a vapor transport system which uses direct displacement by the liquid loaded to force vapors from the tank into a vapor control system.

(25) (31) "Vapor control system" means a system which prevents release to the atmosphere of at least 90 percent by weight of organic compounds in the vapors displaced from a tank during the transfer of gasoline.

(26) (32) "Volatile organic compound" (also denoted as VOC) means any compound of carbon which, ~~for storage tanks~~, has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions or, ~~for all other sources~~, has a ~~whose~~ volatile content that can be determined by the procedure described in

Regulation .0913 or .0939 of this Section excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

Statutory Authority G.S. 143-215.3(a)(1).

.0903 RECORDKEEPING: REPORTING: MONITORING

(a) This Regulation applies to sources subject to Regulations .0917 through .0938 of regulations in this Section.

(b) The owner or operator of any volatile organic compound emission source or control equipment shall maintain:

- (1) records detailing all activities relating to any compliance schedule under Regulations .0907 through .0911 of in this Section;
- (2) records detailing all malfunctions under Regulation .0535 of this Subchapter;
- (3) records of all testing conducted under Regulations .0912 through .0916 and .0939 through .0942 of regulations in this Section; and
- (4) records of all monitoring conducted under Paragraph (d) of this Regulation; and
- (5) records necessary to determine compliance as required by Paragraph (d) of this Regulation.

(c) When requested by the director, the owner or operator of any volatile organic compound emission source or control equipment shall submit reports detailing the following: nature, specific sources, total annual quantities of volatile organic compound emissions or sufficient information to estimate the quantities of volatile organic compound emissions and any other pertinent information to the director when requested.

- (1) General information.
 - (A) Type of source and process description.
 - (B) Schedule of operation.
 - (C) Quantity of volatile organic compounds emitted per day from each source.
 - (D) Quantity and type of wash and clean-up solvents used each day for each source.
- (2) Coating line information.
 - (A) Method of application.
 - (B) Drying method used and minimum temperature.
 - (C) Substrate type.
 - (D) Substrate form.

- (E) Type of coatings applied, number of each coating type applied, and quantity of each type of coating applied per day.
- (F) Percent by weight of volatile organic compounds content of each coating applied.
- (G) Percent by volume of solids content of each coating applied.
- (H) Method used to determine volume percent solids content of coatings.
- (I) Type and quantity of diluents added to each coating and percent by weight of volatile organic content of each diluent.

(3) Control equipment.

- (A) Thermal incinerator:
 - (i) Combustion temperature.
 - (ii) Residence time.
- (B) Catalytic incinerator:
 - (i) Exhaust gas temperature.
 - (ii) Change in temperature across catalyst bed.
 - (iii) Residence time.
 - (iv) Date of last change of catalyst bed.
 - (v) Date of last catalyst test and results of test.
- (C) Condenser:
 - (i) Inlet temperature of cooling medium.
 - (ii) Outlet temperature of cooling medium.
- (D) Emission test results:
 - (i) Inlet volatile organic compound concentration.
 - (ii) Outlet volatile organic compound concentration.
 - (iii) Explanation of how inlet and outlet concentrations have been determined.
 - (iv) Date when these concentrations were last determined.
- (E) Capture system:
 - (i) Type of capture system.
 - (ii) Efficiency of capture system.
 - (iii) Explanation of how capture efficiency has been determined.

The owner or operator of the source shall also provide any other pertinent information to the director when requested.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of any volatile organic compound source required to comply with Regulations .0917 through .0938 of regulations in this Section.

lations in this Section shall, at his own expense, demonstrate compliance by the methods described in Regulations .0912 through .0916 and .0939 through .0942 of this Section or an alternative method approved by the director. No owner or operator, however, shall be required to demonstrate compliance with ~~Regulations .0917 through .0938 of regulations~~ in this Section unless the director requests such demonstration. The director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed. All tests shall be made by, or under the direction of, a person qualified by training and/or experience in the field of air pollution testing.

(f) Compliance shall be determined by the more stringent of the following two:

- (1) Compliance shall be determined on a daily basis for each coating line using a weighted average, that is, dividing the sum of the mass (pounds) of volatile organic compounds in coatings consumed on that coating line, as received, and the mass (pounds) of volatile organic compound solvents added to the coatings on that coating line by the volume (gallons) of coating solids consumed during that day on that coating line; or
- (2) Compliance shall be determined as follows:
 - (A) When low solvent or high solids coatings are used to reduce emissions of volatile organic compounds, compliance shall be determined instantaneously.
 - (B) When add on control devices, e.g., solvent recovery systems or incinerators, are used to reduce emissions of volatile organic compounds, compliance shall be determined by averaging emissions over a one-hour period.
- (g) The director may authorize the Division of Environmental Management to conduct independent tests of any source subject to a regulation in this Section to determine the compliance status of that source or to verify any test data submitted about that source.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0913 DETERMINATION OF VOLATILE CONTENT OF SURFACE COATINGS

(a) In accordance with Regulation .0912 of this Section, the volatile matter content, water content, density, volume of solids and weight

of solids of surface coatings shall be determined by the procedures set forth in Method 24 of Appendix A of 40 CFR Part 60. Compounds exempted under Paragraph (c) of Regulation .0902 of this Section shall be treated as water. The results of the tests shall be expressed in the same units as the emission limits given in the regulation for which compliance is being determined.

(b) In accordance with Regulation .0912 of this Section, the volatile matter and density of printing inks and related coatings shall be determined by the procedures set forth in Method 24A of Appendix A of 40 CFR Part 60. The results of the tests shall be expressed in the same units as the emission limits given in the regulation for which compliance is being determined.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0917 AUTOMOBILE AND LIGHT-DUTY TRUCK MANUFACTURING

(b) This Regulation applies ~~in accordance with Regulations .0907 through .0944 of this Section~~, to the application area(s), flashoff area(s), and oven(s), of automotive and light-duty truck manufacturing plants involved in prime, topcoat and final repair coating operations.

(c) Emissions of volatile organic compounds from any automotive or light-duty truck manufacturing plant coating line subject to this Regulation shall not exceed:

- (1) 1.4 pounds per gallon of solids 4.2 pounds per gallon of coating, excluding water, delivered to the applicator from prime application, flashoff area, and oven operations;
- (2) 4.5 pounds per gallon of solids 2.8 pounds per gallon of coating, daily weighted average, excluding water, delivered to the applicator from topcoat and surface application, flashoff area, and oven operation;
- (3) 13.8 pounds per gallon of solids 4.8 pounds per gallon of coating, excluding water, delivered to the applicator from final repair application, flashoff area, and oven operation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0918 CAN COATING

(b) This Regulation applies ~~in accordance with Regulations .0907 through .0944 of this~~

Section, to coating applicator(s) and oven(s) of sheet, can, or end coating lines involved in sheet basecoat (exterior and interior) and overvarnish; two-piece can interior body spray; two-piece can exterior end (spray or roll coat); three-piece can side-seam spray and end sealing compound operations.

(c) Emissions of volatile organic compounds from any can coating line subject to this Regulation shall not exceed:

- (1) 4.5 pounds per gallon of solids 2.8 pounds per gallon of coating, excluding water, delivered to the coating applicator from sheet basecoat (exterior and interior) and overvarnish or two-piece can exterior (basecoat and overvarnish) operations;
- (2) 9.8 pounds per gallon of solids 4.2 pounds per gallon of coating, excluding water, delivered to the coating applicator from two and three-piece can interior body spray and two-piece can exterior end (spray or roll coat) operations;
- (3) 21.8 pounds per gallon of solids 5.5 pounds per gallon of coating, excluding water, delivered to the coating applicator from a three-piece applicator from a three-piece can side-seam spray operations;
- (4) 7.4 pounds per gallon of solids 3.7 pounds per gallon of coating, excluding water, delivered to the coating applicator from end sealing compound operations.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0919 COIL COATING

(b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~, to the coating applicator(s) oven(s), and quench area(s) of coil coating lines involved in prime and top coat or single coat operations.

(c) Emissions of volatile organic compounds from any coil coating line subject to this Regulation shall not exceed 4.0 pounds per gallon of solids 2.6 pounds per gallon of coating, excluding water, delivered to the coating application from prime and topcoat or single coat operations.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0920 PAPER COATING

(a) For the purpose of this Regulation, the following definitions apply:

- (2) "Paper coating" means decorative, protective, or functional coatings put on paper and pressure sensitive tapes regardless of substrate; the coatings are distributed uniformly across the web. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Saturation operations are included in this definition.
- (b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~, to roll, knife or rotogravure coater(s) and drying oven(s) of paper coating lines.
- (d) Emissions of volatile organic compounds from any paper coating line subject to this Regulation shall not exceed 4.8 pounds per gallon of solids 2.9 pounds per gallon of coating, excluding water, delivered to the coating applicator from a paper coating line.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0921 FABRIC AND VINYL COATING

(a) For the purpose of this Regulation, the following definitions apply:

- (1) "Fabric coating" means the coating of applying protective or functional coatings to a textile substance with a knife, roll, rotogravure, rotary screen, or flat screen coater to impart properties that are not initially present, such as strength, stability, water or acid repellency, or appearance. Printing on textile fabric for decorative or other purposes is not part of this definition. Saturation operations are included in this definition.
- (2) "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife which spreads the coating evenly over the full width of the substrate.
- (3) "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.
- (4) "Rotogravure coating" means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

- (5) "Vinyl coating" means applying a functional, decorative, or protective topcoat, or printing on vinyl coated fabric or vinyl sheets.
- (6) "Rotary screen or flat screen coating" means the application of a coating material to a substrate by means of masking the surface and applying a color or finish using a screen either in flat form or rotary form.
- (b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~ to roll, knife, rotogravure, rotary screen, or flat screen coater(s) and drying oven(s) of fabric and vinyl coating lines.
- (c) Emissions of volatile organic compounds from any fabric coating line or vinyl coating line subject to this Regulation shall not exceed:
 - (1) 4.8 pounds per gallon of solids 2.9 pounds per gallon of coating, excluding water, delivered to the coating applicator from a fabric coating line;
 - (2) 7.9 pounds per gallon of solids 2.8 pounds per gallon of coating, excluding water, delivered to the coating applicator from a vinyl coating line.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0922 METAL FURNITURE COATING

- (a) For the purpose of this Regulation, the following definitions apply:
 - (1) "Application area" means the area where the coating is applied by spraying, dipping, or flowcoating techniques.
 - (2) "Metal furniture coating" means the surface coating of any furniture made of metal or any metal part which will be assembled with other metal, wood, fabric, plastic, or glass parts to form a furniture piece.
- (b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~ to the application area(s), flashoff area(s), and oven(s) of metal furniture coating lines involved in prime and topcoat or single coating operations.
- (c) Emissions of volatile organic compounds from any metal furniture coating line subject to this Regulation shall not exceed 5.1 pounds per gallon of solids 3.0 pounds per gallon of coating, excluding water, delivered to the coating application from prime and topcoat or single coat operations.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0923 SURFACE COATING OF LARGE APPLIANCES

- (a) For the purpose of this Regulation, the following definitions apply:
 - (1) "Application area" means the area where the coating is applied by spraying, dipping, or flowcoating techniques.
 - (2) "Single coat" means a single film of coating applied directly to the metal substrate omitting the primer application.
 - (3) "Large appliances" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.
- (b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~ to application area(s), flashoff area(s), and oven(s) of large appliance coating lines involved in prime, single, or topcoat coating operations.
- (c) This Regulation does not apply to the use of quick-drying lacquers for repair of scratches and nicks which occur during assembly, if the volume of coating does not exceed one quart in any one eight-hour period.

- (d) Emissions of volatile organic compounds from any large appliance coating line subject to this Regulation shall not exceed 4.5 pounds per gallon of solids 2.8 pounds per gallon of coating, excluding water, delivered to the coating applicator from prime, single, or topcoat coating operations.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0924 MAGNET WIRE COATING

- (a) For the purpose of this Regulation, "magnet wire coating" means the process of applying a coating of electrically insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.
- (b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~ to the oven(s) of magnet wire coating operations.
- (c) Emissions of volatile organic compounds from any magnet wire coating oven subject to this Regulation shall not exceed 2.2 pounds per gallon of solids 1.7 pounds per gallon of coating, excluding water, delivered to the coating applicator from magnet wire coating operations.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0925 PETROLEUM LIQUID STORAGE IN FIXED ROOF TANKS

(b) This Regulation applies in accordance with ~~Regulations .0907 through .0911 of this Section~~, to all fixed roof storage vessels with capacities greater than 39,000 gallons containing volatile petroleum liquids whose true vapor pressure is greater than 1.52 psia.

(d) With the exceptions stated in Paragraph (c) of this Regulation, the owner or operator of any fixed roof storage vessel subject to this Regulation shall not use the storage vessel unless:

(4) Routine visual inspections are conducted through ~~hatches~~ roof hatches once per month;

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0926 BULK GASOLINE PLANTS

(b) This Regulation applies in accordance with ~~Regulations .0907 through .0911 of this Section~~, to the unloading, loading, and storage facilities of all bulk gasoline plants and of all tank trucks or trailers delivering or receiving gasoline at bulk gasoline plants.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0927 BULK GASOLINE TERMINALS

(b) This Regulation applies in accordance with ~~Regulations .0907 through .0911 of this Section~~, to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0928 GASOLINE SERVICE STATIONS

STAGE I

(b) This Regulation applies in accordance with ~~Regulations .0907 through .0911 of this Section~~, to all gasoline dispensing facilities and gasoline service stations.

(f) The vapor-laden delivery vessel:

(1) shall be designed and maintained to be vapor-tight during loading and unloading operations and during transport with the exception of normal ~~pressure~~ vacuum pressure vacuum venting as required by regulations of the Department of Transportation; and

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0929 PETROLEUM REFINERY SOURCES

(b) This Regulation applies in accordance with ~~Regulations .0907 through .0911 of this Section~~, to vacuum producing systems, wastewater separators, and process unit turnarounds at petroleum refining sources.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0930 SOLVENT METAL CLEANING

(b) This Regulation applies in accordance with ~~Regulations .0907 through .0911 of this Section~~, to cold cleaning, open top vapor degreasing, and conveyorized degreasing operations.

(e) With the exception stated in Paragraph (c) of the Regulation, the owner or operator of an open top vapor degreaser shall:

(3) install one of the following control devices:

- (A) freeboard ratio greater than or equal to 0.75. If the degreaser opening is greater than 10.8 square feet, the cover must be powered;
- (B) refrigerated chiller;
- (C) enclosed design (The cover or door opens only when the dry part is actually entering or exiting the degreaser.);
- (D) carbon adsorption system, with ventilation greater than or equal to 50 cubic feet per minute per square foot of air/vapor area (when cover is open), and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle; or
- (E) a control system, demonstrated to have control efficiency equivalent to or greater than any listed in Parts (A) through (D) of this Subparagraph, and approved by the director;

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0931 CUTBACK ASPHALT

(b) This Regulation applies as of September 1, 1970, to the manufacture and use of cutback asphalts for the purpose of paving or maintaining roads, highways, streets, parking lots, driveways, curbs, sidewalks, airfields (runways, taxiways, and parking aprons), recreational facilities (tennis courts, playgrounds, and trails), and other similar structures.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0932 GASOLINE TRUCK TANKS AND VAPOR COLLECTION SYSTEMS

(b) This Regulation applies ~~in accordance with Regulation .0907 through .0911 of this Section~~ to gasoline truck tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations that are equipped with vapor balance or vapor control systems.

(c) Gasoline Truck Tanks:

(1) Gasoline truck tanks and their vapor collection systems shall be tested annually. The test procedure that shall be used is described in Regulation .0940 and .0941 of this Section, and is in accordance with Regulation .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 3.0 inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inch inches of water.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0933 PETROLEUM LIQUID STORAGE IN EXTERNAL FLOATING ROOF TANKS

(b) This Regulation applies ~~in accordance with Regulation .0907 through .0911 of this Section~~ to all external floating roof tanks with capacities greater than 950 barrels containing petroleum liquids whose true vapor pressure exceed 1.52 pounds per square inch absolute.

(d) With the exceptions stated in Paragraph (c) of this Regulation, an external floating roof tank subject to this Regulation shall not be used unless:

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0934 COATING OF MISCELLANEOUS METAL PARTS AND PRODUCTS

(b) This Regulation applies ~~in accordance with Regulation .0907 through .0911 of this Section~~ to application areas, flashoff areas, ovens and other processes that are used in the coating of metal parts and products of the following types of manufacturing plants:

(d) Emissions of volatile organic compounds from any coating line subject to this Regulation shall not exceed:

- (1) ~~10.3 pounds per gallon of solids 4.3 pounds per gallon of coating, excluding water~~, delivered to a coating applicator that applies clear coatings;
- (2) ~~6.7 pounds per gallon of solids 3.5 pounds per gallon of coating, excluding water~~, delivered to a coating applicator in a coating application system that utilizes utilized air or forced air driers;
- (3) ~~6.7 pounds per gallon of solids 3.5 pounds per gallon excluding water~~, delivered to a coating applicator that applies extreme performance coatings;
- (4) ~~5.1 pounds per gallon of solids 3.0 pounds per gallon of coating, excluding water~~, delivered to a coating applicator that applies coatings of frequent color changes or of a large number of colors or applies the coating that is the first coat on untreated ferrous substrate; or
- (5) where there are no or infrequent color changes or a small number of colors is applied:
 - (A) ~~0.4 pounds per gallon of solids 0.4 pounds per gallon of coating, excluding water~~, delivered to a coating applicator that applies powder coatings; or
 - (B) ~~5.1 pounds per gallon of solids 3.0 pounds per gallon excluding water~~, delivered to a coating applicator for any other type of coating.

Whenever more than one of the aforementioned emission limitations may apply to a process, then the least stringent emission limitation shall apply to the process.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0935 FACTORY SURFACE COATING OF FLAT WOOD PANELING

(a) For the purpose of this Regulation, the following definitions apply:

- (7) "Tileboard" means paneling that has a colored waterproof surface coating.
- (b) This Regulation applies ~~in accordance with Regulation .0907 through .0911 of this Section~~ to factory finishing of the following flat wood products:

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0936 GRAPHIC ARTS

(a) For the purpose of this Regulation, the following definitions apply:

(2) "Packaging rotogravure printing" means printing with a gravure press upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operation, formed into containers and labels for articles to be sold.

(b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~ to:

- (1) flexographic printing, packaging rotogravure printing and publication rotogravure printing operations; and
- (2) machines that have both coating units and printing units.
- (c) Emissions of volatile organic compounds from any printing unit or drying oven of a printing operation subject to this Regulation shall not be discharged into the atmosphere unless:
 - (3) The ink contains by volume at least 60 percent nonvolatile material; ~~or~~
 - (4) The printing system uses a combination of solvent-borne and water-borne ink such that at least a 70 percent by volume overall reduction in solvent usage is achieved when compared to all solvent-borne ink usage; ~~or~~
 - (5) The ink, including any solvents that may be added to it, contains no more than 0.5 pounds of volatile organic compounds per pound of solids in the ink; only flexographic printing and packaging rotogravure printing may use this option.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0937 MANUFACTURE OF PNEUMATIC RUBBER TIRES

(b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~ to undertread cementing, tread end cementing, bead dipping, and green tire spraying operations of pneumatic rubber tire manufacturing.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0938 PERCHLOROETHYLENE DRY CLEANING SYSTEM

(b) This Regulation applies ~~in accordance with Regulations .0907 through .0911 of this Section~~ to perchloroethylene dry cleaning facilities.

(d) The owner or operator of a per-chloroethylene dry cleaning facility subject to this Regulation shall not cause, allow or permit:

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0941 ALTERNATIVE METHOD FOR LEAK TIGHTNESS

(d) Apparatus. The following equipment is required to conduct the test:

- (1) a pressure/vacuum gauge (Dwyer Magnehelic pressure/vacuum gauge, Model No. 2030 or equivalent) calibrated in 0 to 30 inches of water or a water manometer capable of measuring at least 25 inches of water gauge;
- (2) a locally fabricated water hose coupler which mates with the A.P.I. bottom loading adaptor on the truck tank;
- (3) an appropriate length water hose with shutoff cock to connect to a water supply source;
- (4) a check valve to prevent water from flowing back into the water supply;
- (5) ~~(4)~~ a mixture of soap and water and a two inch paint brush; and
- (6) ~~(5)~~ a Son-Testor ultrasonic air leak detector, Model No. 110, or equivalent.

(c) Test Preparation:

- (1) The unit to be tested is properly parked and chocked. The unit is parked as close as practical to the water supply locations.
- (2) All compartments, discharge lines, and vapor return lines are visually inspected to ascertain that all are completely drained.
- (3) All dome cover, inspection hatches, vapor recovery connections and bottom loading valves are visually inspected to ascertain that all are fully closed.
- (4) At the rear of one of the overturn rails, the pipe plug is removed from the pipe coupling provided for de-gassing operations. The piping containing the pressure/ vacuum gauge is installed into the coupling.
- (5) The water supply hose with check valve is connected to any one compartment bottom loading adaptor.

- (6) All compartment emergency valves and positive vents are opened in the normal manner. This condition permits all compartments to vent into the common vapor recovery system; therefore, only one test is required for the entire tank.

(f) Pressure Test:

- (1) The test is begun by flowing water into the compartment. The pressure gauge is monitored.
- (2) When the pressure gauge indicates 18 inches of water in the tank, the water flow is shut off. When a water manometer is used, this reading is nine inches above and nine inches below the zero indicator.
- (3) The gauge is monitored for five minutes. If the pressure gauge does not drop below an indicated 15 inches of water in these five minutes, the tank passes the pressure test. If the pressure does drop below an indicated 15 inches of water in five minutes, the tank does not pass the pressure test and the leak source must be determined. The soap and water method and a sonic leak detector are to be used to locate the source of leak or leaks. After correcting the leaks, the pressure test must be rerun to certify compliance.
- (4) After compliance has been accomplished, one dome cover is carefully opened to depressurize the tank and is then re-closed.

(g) Vacuum Test:

- (1) The water hose is removed, and water is drained from the compartment until a vacuum of six inches of water is registered on the gauge. The flow of water is stopped by closing the bottom loading valve.
- (2) The gauge is monitored for five minutes. If the vacuum does drop below an indicated three inches of water in the five minutes, the tank does not pass the vacuum test, and the leak source must be determined. The soap and water method and a sonic leak detector are to be used to locate the source of leak or leaks. After the leaks are corrected, the vacuum test must be rerun to certify compliance.
- (3) After compliance has been accomplished, the compartment dome cover is opened; and all water is drained from compartment, line, and bottom loading valve.

(h) Conclusion of Test:

- (1) The test results are recorded and retained in the vehicle test file.
- (2) The pressure vacuum gauge is removed, and the plug is re-installed in the rail. The water hose coupler is removed.
- (3) The tank unit is returned to service.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0943 SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING

(c) The owner or operator of a synthetic organic chemical manufacturing facility or a polymer manufacturing facility shall not cause, allow or permit:

- (1) any liquid leakage of volatile organic compounds; or
- (2) any gaseous leakage of volatile organic compound of 10,000 ppm or greater from any fugitive emission source.

The owner or operator of these facilities shall control emissions of volatile organic compounds from open-ended valves as described in Paragraph (f) of this Regulation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SUBCHAPTER 2II - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0600 - AIR QUALITY PERMITS

.0601 PURPOSE AND SCOPE

(a) The following sources or activities are not likely to contravene any applicable ambient air quality or emission control standard, and therefore, are not required to obtain a permit:

- (1) air conditioning or comfort ventilation systems which do not transport, remove, or exhaust product or byproduct to the atmosphere;
- (2) combustion sources serving heating systems which provide comfort heat for residences;
- (3) laboratory equipment used for chemical or physical analysis;
- (4) nonstationary internal combustion engines and vehicles;
- (5) equipment which emits only nitrogen, oxygen, carbon dioxide, and/or water vapor;
- (6) maintenance, repair, or replacement of existing equipment that does not result in an increase to the emission of air pollutants;
- (7) smudge pots for orchards or small outdoor heating devices to prevent freezing of plants;
- (8) fuel burning equipment firing exclusively gaseous fuel with the total heat input rating of 250 million BTU per hour or less;
- (9) fuel burning equipment firing exclusively No. 1 or No. 2 fuel oil with the

total heat input rating of 100 million BTU per hour or less;

(10) fuel burning equipment firing a mixture, of gaseous fuel, No. 1 fuel oil or No. 2 fuel oil, in any proportion, with the total heat input rating of 100 million BTU per hour or less.

~~All other sources of air pollution for which there is an ambient air quality or emission control standard are considered likely to contravene the applicable standard and, therefore, shall apply for a permit.~~

(b) The owner or operator of any source required to have a permit may request the director to exempt the source from having to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be, contravened. If the documentation shows to the satisfaction of the director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.

(c) ~~The owner or operator of all sources for which there is an ambient air quality or emission control standard that is not exempted by Paragraph (a) or (b) of this Regulation shall apply for a permit. The owner or operator of a source required to have a permit shall not begin constructing or operating the source if it is a new source or modify the source if it is an existing source without first obtaining a permit.~~

(d) ~~(e)~~ Any person who constructs or modifies a complex source subject to Section 15 NCAC 2D .0800 shall obtain a permit in accordance with ~~Regulations .0602 through .0607~~ ~~Regulations .0602 through .0609~~ of this Section. If the source is excepted in Section 15 NCAC 2D .0800, a permit shall not be required.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0603 APPLICATIONS

(d) Before issuing any permit for:

(1) a source to which Regulation 15 NCAC 2D .0530 or .0531 ~~(f)~~ applies,

(2) ~~for~~ a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15 NCAC 2D .0533(a)(4)(A), (B), or (C),

(3) ~~a requirement for controls more stringent than the applicable emission stan-~~

dards in Section 15 NCAC 2D .0500 in accordance with Regulation 15 NCAC 2D .0501, or

(4) ~~for~~ any other source that may be designated by the director, the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality, shall be made available for public inspection in at least one location in the region affected. This shall be accomplished by publishing a notice by prominent advertisement in the region affected and shall allow a 30-day period for submittal of public comment and for an opportunity for a public hearing request. Confidential material will be handled in accordance with G.S. 143-215.3(a)(2).

(e) A public hearing shall be held before the issuance of any permit containing any one of these conditions:

~~(f) a requirement for controls more stringent than the applicable emission standards in Section 15 NCAC 2D .0500 in accordance with Regulation 15 NCAC 2D .0501;~~

(1) ~~(g) any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such limitations are necessary to assure that regulations in Section 15 NCAC 2D .0900 do not apply in accordance with Regulations 15 NCAC 2D .0901 and .0902;~~

(2) ~~(h) an allowance of controls different than the applicable emission standards in Section 15 NCAC 2D .0900 in accordance with Regulation 15 NCAC 2D .0905;~~

(3) ~~(i) an alternate compliance schedule promulgated in accordance with Regulation 15 NCAC 2D .0910;~~

(4) ~~(j) the quantity of solvent-borne ink that may be used by a printing unit or printing systems in accordance with Regulation 15 NCAC 2D .0936; or~~

(5) ~~(k) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for incinerators constructed before July 1, 1987, in accordance with Regulation 15 NCAC 2D .0505.~~

The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection in the appro-

priate regional office. If and when a permit containing these conditions is issued, it will become a part of the North Carolina State Implementation Plan for Air Quality (SIP) as an appendix available for inspection at Department of Natural Resources and Community Development regional offices. The permit will be submitted to the U.S. Environmental Protection Agency for inclusion as part of the federally approved state implementation plan.

(f) In a permit application for an alternative mix of controls under 15 NCAC 2D .0501(f), the owner or operator of the facility shall demonstrate to the satisfaction of the director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact.

- (1) With the exception stated in Subparagraph (2) of this Paragraph, a public hearing shall be held before any permit containing alternative emission limitations is issued. The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the SIP as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1979, pages 71780-71788, and subsequent rulings.
- (2) The permit applicant(s) may choose to provide a written acknowledgment that the emission rate limitations or control techniques allowed under an alternative mix of controls involving only volatile organic compounds are fully enforceable by EPA as a part of the SIP and may be enforced pursuant to Section 304(a) of the federal Clean Air Act. The acknowledgment shall also bind the source owner's successors. If the

acknowledgment is provided to the director, the director will promptly transmit to EPA a copy of the permit application. Before the director issues the permit, there shall be a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when such permit is issued, the director will promptly transmit a copy to EPA. The owner or operator of a source located in a non-attainment area for ozone may not use this option after August 31, 1989; he shall follow the procedures set out in Paragraph (a) of this Rule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0606 DELEGATION OF AUTHORITY

The director may delegate the processing of permit applications and the issuance of permits to the Chief of the Air Quality Section, the regional office supervisor, or the Head of Permits and Operation Branch Assistant Chief for Permitting as he considers appropriate. This delegation shall not include the authority to deny a permit application or to revoke, modify, or suspend a permit.

Statutory Authority G.S. 143-215.3(a)(1).(4).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to adopt rule(s) cited as 15 NCAC 2D .0538.

The proposed effective date of this action is October 1, 1989.

The public hearing will be conducted at 2:00 p.m. on May 19, 1989 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Persons desiring to comment on the proposals are requested to give written notice thereof on or before the hearing date. Any person desiring to present lengthy comments is requested to submit a written statement for in-

PROPOSED RULES

clusion in the record of proceedings at the public hearing. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. To be included, the statement must be received by the Department within 30 days after the hearing date. Additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen

Division of Environmental Management
P.O. Box 27687
Raleigh, North Carolina 27611-7687
(919) 733-3340

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

.0538 AIR STRIPPING CLEANUP OPERATIONS

(a) For the purposes of this Rule, "air stripping cleanup operation" means any process or operation that removes volatile organic compounds from contaminated surfaces, surface waters, groundwater, or soils, and that releases them to the atmosphere.

(b) A person shall not discharge from any air stripping cleanup operation more than 40 pounds of volatile organic compounds into the atmosphere per day unless the discharge is reduced by at least 85 percent.

(c) The owner or operator of an air stripping cleanup operation that existed before May 1, 1989 shall:

- (1) apply for an air permit by August 1, 1989, and
- (2) achieve final compliance by February 1, 1990.

The owner or operator of an air stripping cleanup operation that comes into existence after April 30, 1989, shall have received a permit before beginning construction or operation and shall be in compliance when beginning operation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to adopt rule(s) cited as 15 NCAC 10B .0122.

The proposed effective date of this action is August 1, 1989.

The public hearing will be conducted at 10:00 a.m. on May 15, 1989 at Room 386, Arehdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from May 1, 1989 to May 30, 1989. Such written comments must be delivered or mailed to the N. C. Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0122 PROHIBITED HUNTING ON STATE FISH HATCHERIES

It is unlawful to possess a loaded firearm within a posted restricted zone on any state owned fish hatchery or to discharge a firearm into or across such a restricted zone.

Statutory Authority G.S. 113-134; 113-264.

Notice is hereby given in accordance with G.S. 150B-12 that the NRCD/Division of Economic Opportunity intends to amend rule(s) cited as 15 NCAC 10B .0103 and .0201.

The proposed effective date of this action is September 1, 1989.

The public hearing will be conducted at 10:00 a.m. on June 7, 1989 at Conference Room, Division of Economic Opportunity, 2413 Crabtree Blvd., Suite 119, Raleigh, N. C.

Comment Procedures: All interested persons are invited to attend. Comments may be submitted in writing or may be presented orally at the hearing. Oral presentations which exceed three minutes are requested to have a written copy to be filed with the hearing clerk. Further details of the proposed amendments may be

obtained by writing or calling: Mr. George C. Jones, Director, Division of Economic Opportunity, Post Office Box 27687, Raleigh, N. C. 27611 Phone: (919) 733-2633.

CHAPTER 16 - DIVISION OF ECONOMIC OPPORTUNITY

SUBCHAPTER 16E - EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0103 ELIGIBLE ACTIVITIES

Activities funded under this Subchapter may include only those projects which:

- (1) Expand comprehensive services to homeless individuals to provide follow-ups and long-term services to enable homeless individuals to make the transition out of poverty.
- (2) Provide assistance in obtaining social and maintenance services and income support services for homeless individuals.
- (3) Promote private sector and other assistance to homeless individuals.
- (4) Provide homeless prevention assistance which includes aid to any individual who has received a notice of foreclosure, eviction, or termination of utility services, if:
 - (a) the inability of the individual to make mortgage, rental, or utility payments is due to a sudden reduction in income;
 - (b) the assistance is necessary to avoid the foreclosure, eviction, or termination of utility services; and
 - (c) there is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

SECTION .0200 - ADMINISTRATIVE POLICIES AND PROCEDURES

.0201 GENERAL PROVISION

(a) The provisions of Subchapters 16B, 16C, and 16F of this Chapter shall govern administration of funds by grant recipients under the Emergency Community Services Homeless Grant Program, except that in the case of conflicts among the provisions of Subchapters 16B, 16C, and 16F, the provisions of Subchapter 16F shall govern.

(b) Funds shall not be used to supplant other programs for homeless individuals administered by the State.

(c) Funds will not be used to defray State administrative costs.

(d) Agencies funded under the Emergency Community Services Homeless Grant Program will be required to show evidence of co-ordination with homeless assistance agencies at the local level in their application for funds.

(e) Agencies funded under the Emergency Community Services Homeless Grant Program may not utilize more than 25 percent of funds awarded for the purpose described in Section .0100, Rule .0103(4) of this Subchapter.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Certification Board for Social Work intends to adopt rule(s) cited as 21 NCAC 63 .0602 - .0608, .0701 - .0704.

The proposed effective date of this action is August 1, 1989.

The public hearing will be conducted at 10:00 a.m. on May 18, 1989 at Davidson County Human Resource Center, 915 Greensboro Street (off N. Main St., Business I-85), Lexington, NC 27292.

Comment Procedures: Written comments should be sent to Dr. Carl Mumpower, Chairperson, N.C. Certification Board for Social Work, 111 McDowell Street, Asheville, N.C. 28801 by May 1, 1989.

CHAPTER 63 - CERTIFICATION BOARD FOR SOCIAL WORK

SECTION .0600 - DISCIPLINARY PROCEDURES

.0602 NOTICE OF HEARING: ANSWER

(a) The contents and manner of service of notice of hearing in a contested case shall be as prescribed in G.S. 150B-38 (b) and (c).

(b) Any party who has been served with notice of hearing may file a written response as prescribed in G.S. 150B-38(d).

Statutory Authority G.S. 90B-6(h); 150B-9.

.0603 RIGHT TO HEARING

(a) Contested Cases. Disciplinary proceedings to enforce the provisions of G.S. 90B-11 and Rule 21 NCAC 63 .0601 are deemed to be "contested cases" within the meaning of G.S. 150B-2, and any person subject to such proceedings shall be given notice and the opportunity to be heard.

(b) Emergency Certificate Suspension. Nothing within Paragraph (a) of this Rule shall abridge the right of the Board to take emergency action to summarily suspend a certificate prior to hearing pursuant to G.S. 150B-3(c).

Statutory Authority G.S. 90B-6(h); 150B-9.

.0604 LOCATION OF HEARING

The location of the hearing in a contested case shall be as prescribed in G.S. 150B-38(e).

Statutory Authority G.S. 90B-6(h); 150B-9.

.0605 INTERVENTION

The intervention of persons not initially parties to a contested case is governed by G.S. 150B-38(f). Petitions or motions to intervene must be in writing. The Board shall promptly determine whether to grant or deny intervention and shall so notify the petitioner and all parties in writing.

Statutory Authority G.S. 90B-6(h); 150B-9.

.0606 SUBPOENAS

The authority of the Board to issue or revoke subpoenas in preparation for, or in the conduct of, contested cases is governed by G.S. 150B-39. If a subpoena is issued at the request of a party and not on the Board's own motion, that party shall bear the cost of service.

Statutory Authority G.S. 90B-6(h); 150B-9.

.0607 CONDUCT OF HEARING

(a) General Hearings in contested cases shall be conducted by a majority of the Board. The Chairperson shall serve as presiding officer unless he is absent or disqualified, in which case the Vice-chairperson shall preside. Hearings shall be conducted as prescribed by G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, will be

ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Board member should be disqualified.
- (c) Evidence. The admission of evidence in a hearing on a contested case shall be as prescribed in G.S. 150B-41.

Statutory Authority G.S. 90B-6(h); 150B-9.

.0608 DECISION OF BOARD

(a) The form and content of the Board's decision in a contested case shall be as prescribed by G.S. 150B-42(a), and its decision shall be served upon the parties in a manner consistent with said statute.

(b) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).

Statutory Authority G.S. 90B-6(h); 150B-9.

SECTION .0700 - ADOPTION OF RULES

.0701 PETITIONS FOR ADOPTION OF RULES

(a) The procedure for petitioning the Board to adopt, amend, or repeal a rule is governed by G.S. 150B-16.

(b) Submission. Rule-making petitions shall be sent to the secretary of the Board. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of the proposed rule;
- (2) the reason for its proposal;
- (3) the effect of the proposed rule on existing rules or decisions;
- (4) data supporting the proposed rule;
- (5) practices likely to be affected by proposed rule;
- (6) persons likely to be affected by the proposed rule.

(c) Disposition. The secretary shall review the petition and develop a recommendation as to whether the petitioner's proposed rule should be rejected or implemented. The secretary shall present the petition and his recommendation to the Board at its next regular meeting following receipt of the petition, and the Board shall render its decision to either deny the petition or initiate rule-making. The

Board shall notify the petitioner of its decision in writing within the 120-day period set by G.S. 150B-16.

Statutory Authority G.S. 90B-6(h); 150B-9.

.0702 PROCEDURE FOR ADOPTION OF RULES

(a) General. The procedure for the adoption, amendment or repeal of rules is governed by G.S. 150B-12.

(b) Notice of Rule-Making. In addition to the mandatory publication of notice in the North Carolina Register, the Board, in its discretion, may also publish notice through its newsletter to certified persons or by separate mailing. Any person who wishes to receive individual notice shall file a written request with the secretary and shall be responsible for the cost of mailing said notice.

(c) Public Hearing. Any public rule-making hearing required by G.S. 150B-12 shall be conducted by the chairperson of the Board or by any person he may delegate. The presiding officer shall have complete control of the hearing and shall conduct the hearing so as to provide a reasonable opportunity for any interested person to present views, data and comments:

- (1) Oral presentations shall not exceed 15 minutes unless the presiding officer, in his discretion, prescribes a greater time limit.
- (2) Written presentations shall be acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

Statutory Authority G.S. 90B-6(h); 150B-9.

.0703 TEMPORARY RULES

The power of the Board to adopt temporary rules and the procedure by which such rules are put into effect are governed by G.S. 150B-13.

Statutory Authority G.S. 90B-6(h); 150B-9.

.0704 DECLARATORY RULINGS

(a) General. The issuance of declaratory rulings by the Board is governed by G.S. 150B-17.

(b) Request for Declaratory Ruling; Contents. A request for a declaratory ruling shall be in writing and addressed to the secretary. The request shall contain the following information:

- (1) The name and address of the person making the request;
- (2) The statute or rule to which the request relates;
- (3) A concise statement of the manner in which the person has been aggrieved by the statute or rule;
- (4) A statement as to whether a hearing is desired, and if desired, the reason therefor.

(c) Refusal to Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:

- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case;
- (2) When the facts underlying the request for a ruling were specifically considered at the time of the adoption of the rule in question;
- (3) When the subject matter of the request is involved in pending litigation in North Carolina.

Statutory Authority G.S. 90B-6(h); 150B-9.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel State Personnel Commission intends to adopt rule(s) cited as 25 NCAC 1D .1951.

The proposed effective date of this action is September 1, 1989.

The public hearing will be conducted at 9:00 a.m. on June 15, 1989 at Personnel Development Center, 101 W. Peace Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, OSP, 116 W. Jones Street, Raleigh, North Carolina, 27611.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .1900 - HOURS OF WORK AND OVERTIME COMPENSATION

.1951 OVERTIME COMPENSATION

PROHIBITED: EXEMPT EMPLOYEES

No employee whose position is designated as exempt from overtime compensation provisions of this Section shall be paid in any way for hours worked in excess of 40 in a work week. This Rule shall not be construed to prohibit any agency from adopting and using

a compensatory leave ("comp time") policy for executive, administrative or professional employees in accordance with 25 NCAC 1E .1006.

Statutory Authority: G.S. 126-4(5), (10).

Upon request from the adopting agency, the text of rules will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Codified" and the text of the adopted rule will not be re-published.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

APRIL 1989

	AGENCY		ACTION TAKEN
<u>DEPARTMENT OF ADMINISTRATION</u>			
1	NCAC 30D	.0103	Amended
<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC 42	.0102	Amended
	48C	.0002	Temp. Amended
		.0004	Expires 09-12-89
			Temp. Amended
			Expires 09-12-89
<u>DEPARTMENT OF CORRECTION</u>			
5	NCAC 2G	.0306	Amended
<u>GOVERNOR/LT. GOVERNOR'S OFFICE</u>			
9	NCAC 2B	Executive Order Number 85	
		Eff. March 1, 1989	
		Executive Order Number 86	
		Eff. March 1, 1989	
	3A	.0101	Amended
		.0102	Repealed
		.0103	Amended
<u>DEPARTMENT OF HUMAN RESOURCES</u>			
10	NCAC 3M	.0104	Correction
		.0107	Correction
	8A	.1201 - .1211	Temp. Adopted
			Expires 09-16-89
	18Q	.0701 - .0708	Correction
<u>DEPARTMENT OF INSURANCE</u>			
11	NCAC 4	.0115 - .0118	Amended

		.0119	Adopted
		.0312 - .0315	Amended
		.0319 - .0320	Amended
		.0416	Amended
		.0418 - .0419	Amended
		.0421	Amended
		.0423	Amended
		.0424 - .0425	Adopted
		.0427 - .0428	Adopted
6A		.0602	Amended
8		.0901 - .0902	Amended
		.0905	Amended
12		.0101	Amended
		.0302	Repealed
		.0307 - .0308	Amended
		.0311	Repealed
		.0312	Amended
		.0314 - .0316	Repealed
		.0322 - .0324	Adopted
		.0407	Amended
		.0417 - .0418	Repealed
		.0420 - .0421	Amended
		.0424	Amended
		.0427 - .0429	Amended
		.0431	Amended
		.0436	Amended
		.0441	Amended
		.0446 - .0447	Amended
		.0457	Repealed
		.0502	Repealed
		.0504	Amended
		.0514	Amended
		.0515	Repealed
		.0543 - .0544	Amended
		.0547	Repealed
		.0551	Amended
		.0554 - .0558	Adopted
		.0704	Adopted
		.0706	Adopted
		.0709 - .0711	Adopted

DEPARTMENT OF LABOR

13	NCAC	7C	.0101	Amended
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DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

15	NCAC	711	.1905	Correction
		131	.0106	Adopted
			.0407	Amended
			.0903	Amended
			.0908	Amended
			.0910	Amended
			.1401	Amended
			.1405	Adopted
13Q			.0101 - .0104	Temp. Adopted
				Expires 09-02-89
			.0201 - .0202	Temp. Adopted
				Expires 09-02-89

FINAL RULES

.0301 - .0304	Temp. Adopted
.0401 - .0403	Expires 09-02-89
.0501 - .0503	Temp. Adopted
.0601 - .0605	Expires 09-02-89
.0701 - .0704	Temp. Adopted
	Expires 09-02-89

DEPARTMENT OF TRANSPORTATION

19A	NCAC	3G	.0201 - .0202	Repealed
			.0203 - .0213	Adopted
31			.0201 - .0202	Amended
			.0303	Amended
			.0307	Amended
			.0501	Amended
			.0801	Amended

DEPARTMENT OF STATE TREASURER

20	NCAC	2M	.0104	Adopted
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COMMISSION FOR AUCTIONEERS

21	NCAC	4B	.0102	Amended
			.0104	Amended
			.0202	Amended
			.0401 - .0402	Amended
			.0405	Amended

BOARD OF CHIROPRACTIC EXAMINERS

21	NCAC	10	.0201	Amended
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BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14M	.0001 - .0006	Amended
			.0009 - .0013	Amended
			.0016 - .0017	Amended

BOARD OF GEOLOGISTS

21	NCAC	21	.0101	Amended
			.0102	Repealed
			.0103 - .0107	Amended
			.0201	Repealed
			.0202 - .0203	Amended
			.0204	Repealed
			.0301 - .0302	Amended
			.0401 - .0402	Repealed
			.0501 - .0508	Amended
			.0509	Repealed
			.0510 - .0511	Amended
			.0512	Repealed
			.0513	Amended
			.0601 - .0605	Amended
			.0701 - .0702	Repealed

FINAL RULES

.0801	Repealed
.0802 - .0804	Amended
.0805 - .0806	Repealed
.0807	Amended
.0901	Repealed
.0903	Amended

HEARING AID DEALERS AND FITTERS BOARD

21	NCAC 22B	.0501	Amended
	22F	.0004	Amended
		.0016	Amended
	22I	.0003	Amended
		.0008	Amended

MARTIAL AND FAMILY THERAPY CERTIFICATION BOARD

21	NCAC 31	.0101	Repealed
		.0103	Repealed
		.0104	Amended
		.0201 - .0202	Amended
		.0303	Amended
		.0402	Amended
		.0501 - .0503	Amended
		.0505	Amended
		.0601	Amended
		.0603	Amended
		.0605 - .0606	Amended

BOARD OF NURSING

21	NCAC 36	.0102	Repealed
		.0109	Amended
		.0201	Amended
		.0207	Amended
		.0216	Amended
		.0220 - .0221	Amended
		.0401	Correction
		.0405	Correction

EXAMINING COMMITTEE OF PHYSICAL THERAPY

21	NCAC 48A	.0003	Amended
		.0005	Amended
	48B	.0002 - .0003	Amended
	48C	.0101	Amended
		.0103	Amended
		.0301	Amended
	48D	.0006	Amended
		.0010	Amended
	48E	.0103 - .0104	Amended
		.0110	Amended
	48F	.0002	Amended
	48G	.0103	Amended
		.0202 - .0203	Amended
	48H	.0104	Amended

FINAL RULES

BOARD OF PRACTICING COUNSELORS

BOARD OF EXAMINERS OF PRACTICING PSYCHOLOGISTS

BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

21	NCAC 56	.0101	Amended
		.0102	Repealed
		.0103	Amended
		.0301 - .0302	Repealed
		.0303	Amended
		.0401	Amended
		.0403 - .0405	Amended
		.0501 - .0503	Amended
		.0504	Repealed
		.0505	Amended
		.0601 - .0603	Amended
		.0605	Repealed
		.0606	Amended
		.0701 - .0702	Amended
		.0801	Repealed
		.0802	Amended
		.0803	Repealed
		.0804	Amended
		.0805	Repealed
		.0901 - .0902	Amended
		.1001	Amended
		.1101 - .1105	Amended
		.1107 - .1108	Repealed
		.1201	Amended
		.1202	Repealed
		.1203	Amended
		.1204	Repealed
		.1301 - .1302	Amended
		.1402 - .1403	Amended
		.1404 - .1408	Repealed
		.1409	Amended
		.1410	Repealed
		.1412	Repealed
		.1413	Amended

BOARD OF REFRIGERATION EXAMINERS

21	NCAC 60	.0101 .0103 .0201 .0207 .0304 .0311 .1101	Amended Amended Amended Amended Amended Amended Amended Repeated
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FINAL RULES

.1102 - .1103	Amended
.1104	Repealed

BOARD OF SANITARIAN EXAMINERS

21	NCAC 62	.0101	Repealed
		.0102 - .0104	Amended
		.0201 - .0206	Amended
		.0207	Repealed
		.0208	Amended
		.0301 - .0302	Amended
		.0305 - .0310	Amended
		.0311 - .0313	Repealed
		.0314 - .0317	Amended
		.0318	Repealed
		.0319	Amended
		.0401 - .0408	Amended
		.0409 - .0410	Repealed
		.0413	Repealed

DEPARTMENT OF COMMUNITY COLLEGES

23	NCAC 2D	.0301	Amended
		.0328	Amended

N.C. AGRICULTURAL FINANCE AUTHORITY

24	NCAC 2A	.0001 - .0003	Adopted
	2B	.0001 - .0002	Adopted
	2C	.0001	Adopted

OFFICE OF STATE PERSONNEL

25	NCAC 1J	.0503	Amended
		.0508	Amended
		.0603	Amended

OFFICE OF ADMINISTRATIVE HEARINGS

26	NCAC 3	.0030	Adopted
	4	.0002 - .0007	Amended
		.0009 - .0010	Adopted

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Public Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	General Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in

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46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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1989 - 1990

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FR	- Final Rule
GS	- General Statute
JO	- Judicial Orders or Decision
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TR	- Temporary Rule

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